

FCC MAIL SECTION

FEB 9 1998
Federal Communications Commission

DA 98-179

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.)

(Topeka, Iola, and Emporia, Kansas))

MM Docket No. 98-13
RM-9212**NOTICE OF PROPOSED RULE MAKING
AND ORDER TO SHOW CAUSE****Adopted: January 28, 1998****Released: February 6, 1998**

Comment Date: March 30, 1998

Reply Comment Date: April 14, 1998

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Shawnee Broadcasting Corporation ("petitioner"), licensee of Station KWIC(FM), Channel 257A, Topeka, Kansas, proposing the substitution of Channel 257C3 for Channel 257A at Topeka and modification of Station KWIC(FM)'s license to specify operation on the higher powered channel. In order to accomplish the upgrade at Topeka, petitioner also requests the substitution of Channel 268A for Channel 257A at Iola, Kansas, and the modification of Station KIKS(FM)'s license to specify the change in channel; and the substitution of Channel 241A for Channel 258A at Emporia, Kansas, and the modification of Station KRWV(FM)'s license accordingly. Petitioner states its will apply for Channel 257C3 at Topeka and will also reimburse the licensees of Station KIKS(FM) and KRWV(FM) for the lawful and reasonable expenses associated with the change in channels at Iola and Emporia, respectively.

2. In support of its proposal, petitioner states the adoption of its proposal would permit Station KWIC(FM) to increase its potential audience by 13.7% (195,257 persons versus the present 171,737) and will increase its service area by 100% (4684 square kilometers versus 2341). Petitioner advises that the channel substitutions for Stations KIKS(FM) and KRWV(FM) will enable both stations to increase their potential audiences and service areas, even though the stations will not be required to change their transmitters sites. Petitioner submits that as a 6 kw Class A outlet, Station KWIC(FM) is not maximizing its

potential audience and service area, and operates at a severe competitive disadvantage vis -a-vis the other Topeka FM stations.

3. We believe petitioner's proposal warrants consideration since it could enable Station KWIC(FM) to upgrade its facilities and expand its service area. Channel 257C3, Channel 268A, and Channel 241A can be allotted to Topeka, Iola, and Emporia, respectively in compliance with the Commission's minimum distance separation requirements. Channel 257C3 can be allotted to Topeka with a site restriction of 3.9 kilometers (2.4 miles) northeast.¹ Channel 268A and Channel 241A can be allotted to Iola and Emporia respectively, at the transmitters sites specified in Station KIKS(FM)'s and Station KRWV(FM)'s authorizations.² Therefore, we will direct an Order to Show Cause to the licensees of Station KIKS(FM) and Station KRWV(FM) why their licenses should not be modified to specify operation on Channel 268A and Channel 241A as proposed herein.

4. As requested, we shall propose to modify the license of Station KWIC(FM) at Topeka, Kansas, to specify operation on Channel 257C3. In accordance with Section 1.420(g) of the Commission's Rules we will not accept competing expressions of interest or require that the petitioner demonstrate the availability of an additional equivalent channel at Topeka, Kansas.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Topeka, Kansas	247C, 257A, 262C, 295C, 299C	247C, 257C3, 262C, 295C, 299C
Iola, Kansas	257A	268A
Emporia, Kansas	258A, 269A, 285A	241A, 269A, 285A

¹ The coordinates for Channel 257C3 at Topeka are 39-01-12 NL and 95-41-25 WL.

² The coordinates for Channel 268A at Iola, Kansas, are 37-54-04 NL and 95-24-04 WL. The coordinates for Channel 241A at Emporia, Kansas, are 38-24-21 NL and 96-14-13 WL.

6. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Iola Broadcasting, Inc. and C & C Consulting, Inc., respective licensees of Station KIKS(FM), Iola, Kansas, and Station KRWV(FM), Emporia, Kansas, SHALL SHOW CAUSE why their licenses SHOULD NOT BE MODIFIED to specify operation on Channel 268A and Channel 241A as proposed herein instead of the present Channel 257A and Channel 258A.

7. Pursuant to Section 1.87 of the Commission's Rules, Iola Broadcasting, Inc. and C & C Consulting, Inc., may, not later than March 30, 1998, file a written statement showing with particularity why their licenses should not be modified as proposed in the Order to Show Cause. The Commission may call on Iola Broadcasting, Inc. and C & C Consulting, Inc. to furnish additional information. If Iola Broadcasting, Inc. and C & C Consulting, Inc. raise a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Iola Broadcasting, Inc. and C & C Consulting, Inc. will be deemed to have consented to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

8. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this Notice of Proposed Rule Making and Order to Show Cause to the licensees of Station KIKS(FM) and Station KRWV(FM):

Iola Broadcasting, Inc.
P.O. Box 710
Iola, Kansas 66749
[Licensee of Station KIKS(FM)]

C & C Consulting, Inc.
713 East Clark
Emporia, Kansas 41541
[Licensee of Station KRWV(FM)]

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

11. Interested parties may file comments on or before March 30, 1998, and reply comments on or before April 14, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission,

Washington, DC 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Howard J. Braun
Jerold L. Jacobs
Rosenman & Colin LLP
1300 - 19th Street, N.W.
Suite 200
Washington, D.C. 20036
(Counsel for petitioner)

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

13. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement.

Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be

accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW, Washington, DC.